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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

ROBERT GROGAN, ET AL., Plaintiffs and Appellants, v. SONDRA DEBARR, ET AL., Defendants and Respondents.	A152698, A153294 (Alameda County Super. Ct. No. RP13694625, RP13698276)

Robert Grogan and Helen Grogan appeal from a judgment that resolved several petitions in consolidated cases in the probate court, and from an order denying their motion to vacate that judgment. They principally contend (1) the judgment is void because the court did not resolve all the petitions in the consolidated proceedings; (2) transfers from the decedent to respondent Sondra DeBarr were invalid under Probate Code section 21350; and (3) the court should have granted their motion to vacate the judgment. We will affirm.

I. FACTS AND PROCEDURAL HISTORY

Clara Marshman (Decedent), born in 1930, executed a will dated February 18, 2004, which appointed Helen Grogan executor and gave all of Decedent's property to The Clara E. Marshman Trust of January 4, 1996; the 1996 trust in turn provided for Decedent's estate, except for specified payments, to be distributed to Helen Grogan (or, if Helen predeceased Decedent, to Robert Grogan). Decedent later signed a will dated June

1, 2009, which appointed Sondra DeBarr executor and gave all her property to the Clara E. Marshman Revocable Trust of June 1, 2009; the 2009 trust provided for Decedent's estate, except for specified payments, to be distributed to DeBarr. After Decedent died, litigation ensued.

In *The Estate of Clara E. Marshman*, superior court case number RP13-694625 (Estate Proceedings), DeBarr filed a petition to probate the June 2009 will. The Grogans filed a petition to probate the February 2004 will; a petition contesting the June 2009 will; and a petition under Probate Code section 850 to determine title to property allegedly belonging to Decedent's estate, and to recover twice the value of the property wrongfully taken (850 Petition).

In *In re the Clara E. Marshman Trust*, superior court case number RP13-698276 (Trust Proceedings), DeBarr filed a petition to confirm DeBarr as the trustee of the 2009 trust. The Grogans filed a petition to invalidate the purported June 1, 2009 amendment to the Clara Marshman Revocable Trust.

The Estate Proceedings and Trust Proceedings were consolidated, and the matter proceeded to trial in the probate court on all six petitions. The Grogans opposed bifurcation, urging that the allegations of financial elder abuse in their 850 Petition were at the core of their overall case theory and were intertwined with the other petitions. (The Grogans claimed that DeBarr, as agent for her friend James Hardwick, engaged in a scheme to win Decedent's trust and misappropriate her assets.) The court agreed not to bifurcate the trial, stating that it would hear evidence in a single proceeding and then determine the petitions as appropriate—"first about the trust and the will, and then depending on where it is, . . . whether or not the assets had been removed." The court added, "I ultimately may not make a decision about Mr. Hardwick, depending on what happens in the first part, but it's a single proceeding."

A. Evidence at Trial

1. The Grogans

Helen and Decedent became friends in the 1960's and remained friends through Helen's move to San Diego with her husband Robert in 1971. After Decedent's husband

died in 1986, Decedent annually visited the Grogans in San Diego until December 2008. Decedent did not visit the Grogans thereafter, although Robert visited Decedent three times between January 2009 and June 2013. According to DeBarr, Decedent said her December 2008 visit with the Grogans did not go well, and she was very unhappy with them.

2. DeBarr

DeBarr met Decedent around January 2002, while teaching music and exercise classes for the Hayward Unified School District at the Landmark Villa senior living and assisted care facility. Decedent's friend, Marjorie Apple, lived at Landmark Villa, and she and Decedent attended adult education classes there. DeBarr and Decedent became friends around 2005.

3. Early 2009

In the beginning of 2009, Decedent was living alone and independently at her home. In January, Decedent asked Robert for advice about her possibly making a loan to a friend of DeBarr's. When Robert learned the loan was for a substantial amount and would be made from Apple's assets—which Decedent was handling—he called Decedent the next day and advised against it; Decedent replied that she had already decided not to make the loan.

In February 2009, Decedent was hospitalized twice due to a heart condition. After the second hospitalization, she was transferred to Bethesda Christian Care Center for physical therapy, where DeBarr also taught classes; Decedent stayed there until March 12, 2009, when she returned home.

Robert visited Decedent in her home for about two weeks in March 2009. The Grogans arranged for in-home physical therapy and a part-time caregiver to assist Decedent with some daily activities and light housework, and made modifications to the home to accommodate Decedent's physical disabilities. The caregiver provided assistance for approximately a month. Decedent was able to hold a normal conversation, understood who she was, understood who Robert and other friends were, sought financial advice from Robert, set up an on-line payment plan to pay for Apple's residential care

expenses, paid Apple's other expenses, followed the recommendations of her therapists, paid her own bills, and made her own medical decisions. After Robert's visit, Decedent again lived alone.

In March 2009, an unknown person filed a report with Alameda County Adult Protective Services (APS), claiming Decedent was the victim of elder abuse. Specifically, it was alleged that DeBarr had asked Decedent to loan Apple's assets to DeBarr's friend. APS investigator Molly Woelffer spoke with several persons about the allegations, although DeBarr refused to meet with her. Decedent eventually admitted to Woelffer that DeBarr had requested the loan, but Decedent said she would not allow anyone to take Apple's trust money and denied being influenced or abused by DeBarr. Woelffer found Decedent to be coherent, cognizant, not confused or forgetful, taking her own medications, aware of who her doctors were, paying Apple's bills, and handling her own financial affairs, including deciding on her own not to make the requested loan. Since no property had been taken, Woelffer concluded the allegation of financial elder abuse could not be sustained. Woelffer noted in her report that the allegations of financial abuse and mental abuse were unfounded, and she confirmed at trial that she had not found any evidence of it.

In roughly April 2009, Decedent interviewed and hired a new caregiver, Shirley Butler, who was a friend of DeBarr's. Butler worked for Decedent for about a year and a half, assisting her with cooking, laundry, dressing, getting to appointments, and other assistance Decedent requested. Butler worked only four hours a day, Monday through Friday; Decedent cared for herself the rest of the time.

Decedent was a patient of Dr. Barry Mann, a board-certified neurologist. Dr. Mann had diagnosed Decedent as suffering from cerebral vascular disease, which can affect cognition, judgment, and reasoning. She also had Parkinsonism and slurred some of her words. In May 2009, Dr. Mann administered the Mini Mental State Examination (MMSE), testing Decedent's cognitive abilities. Dr. Mann expects a score of 27 or better out of 30, and Decedent scored 27. Dr. Mann acknowledged that a normal MMSE score does not preclude the possibility that a patient could have cognitive deficits that interfere

with financial and medical decision-making. However, when he examined Decedent in May 2009, she was cognitively clear enough to understand "at least some types of decisions financially" and he suspected that "she could definitely make simple decisions."

From January 2009 through June 2009, Decedent took five or six classes from DeBarr. DeBarr did not provide her with medical services, clean her house, administer medications, shop for groceries, cook, do laundry, dress or bathe Decedent, or assist with her financial affairs. Decedent continued to handle her own financial affairs and assisted Apple with financial matters as well.

4. Testamentary Instruments (April-June 2009)

In early April 2009, Decedent decided to change her estate plan. She met with attorney Arthur Abelson in mid-April 2009 at Decedent's home for approximately 45–60 minutes. No one else was present. Abelson testified that Decedent had no difficulty speaking, did not appear to have any hearing or visual impairments, and did not seem drowsy, forgetful, or confused.

Decedent and Abelson discussed a variety of topics, including Decedent's assets, the specific assets she wanted to go into her trust, her relatives, and the fact she was the agent under a power of attorney for Apple and she managed Apple's money and finances. Decedent told Abelson she wanted a new set of estate planning documents, including a new trust, will, and powers of attorney. Decedent seemed to understand the nature and consequences of the documents and intended to revoke her prior testamentary instruments. She wanted her trustee and executor to be her sister, Mary Jane Lindfield, or alternatively DeBarr; she also knew whom she wanted to be the agent and alternate agent under her power of attorney and advanced health care directive, that she wanted $5,000 to be given to each of her brothers, that she wanted $10,000 to be given to certain friends (including the Grogans), and that she wanted her sister to receive the remainder of her estate (or, if her sister predeceased her, she wanted DeBarr to receive the remainder).

On April 27, 2009, Abelson met with Decedent at her home for approximately 45 minutes; no one else was present except Abelson's secretary. Abelson reviewed the

newly drafted trust, will, advanced health care directive, and power of attorney with Decedent, who appeared to understand what she was signing.

In May 2009, Decedent contacted Abelson's office indicating she wanted to change the trustee and executor to DeBarr, and the remainder beneficiary to DeBarr, with Decedent's sister as the alternative if DeBarr predeceased Decedent. Abelson spoke to Decedent for about 15 minutes about these proposed changes, including what triggered Decedent's change of mind. Decedent told Abelson she wanted to make the changes, it was her own independent choice, and no one had influenced her. Her rationale was that she felt closer to DeBarr than to her sister, because her sister lived in New York and did not often visit. Abelson testified that Decedent was adamant about her decision.

Abelson returned to Decedent's home on June 1, 2009, with the amended trust, will, and advanced health care directive. The only persons present were Decedent, Abelson, and his secretary. Abelson reviewed the documents with Decedent, and Decedent signed them. She seemed to understand what she signed, was not confused, appeared to have capacity, and did not appear to be unduly influenced by anyone.[1]

5. June-December 2009

Later in June 2009, Decedent was again hospitalized due to her heart condition. After discussing and weighing her medical options with her doctor, Decedent received an implanted pacemaker. She then returned home. Aside from the 20 hours per week that she received assistance from her caregiver, Decedent continued to care for herself, including administering her own medications and making her own medical and financial decisions.

Decedent's next appointment with Dr. Mann was in August 2009. Dr. Mann did not believe that Decedent showed signs of progressive dementia, and he did not diagnose her as suffering from Alzheimer's disease. During all of his appointments with

[1] DeBarr had not referred Decedent to Abelson, was not present for their meetings, and was in Europe or out of the area for most of May 2009. DeBarr testified she was unaware that Decedent had named her as trustee of the June 2009 trust until after it was signed.

Decedent, including in August 2009, she was able to hold fluid conversations and understood the medications she was prescribed.

In October 2009, APS investigator Woelffer conducted further investigation. In an interview in January 2010, Decedent denied changing her trust, and the investigation was closed as inconclusive due to Decedent's refusal to cooperate. In Woelffer's opinion as of January 2010, Decedent was capable of exercising her own judgment. Although "[g]enerally speaking," Woelffer found that Decedent was being swayed by DeBarr and DeBarr was her "go-to person," in the end Woelffer concluded there was no financial or elder abuse and the allegations made against DeBarr were unfounded.[2]

In March 2010, Decedent scored a 29 out of 30 on the MMSE, which Dr. Mann considered cognitively normal. In August 2010, she scored 28 out of 30. The next month Decedent fell and suffered a compression fracture; Eden Medical Center suggested she receive 24-hour home care or be placed in an assisted living environment, but Decedent continued to live alone until sometime in 2012.

6. DeBarr and Hardwick

In 2011, Hardwick – a friend of DeBarr's and known to Decedent since 2005—borrowed approximately $190,000 from Decedent and from Apple's trust, of which Decedent was trustee, as evidenced by promissory notes. DeBarr testified that she had nothing to do with the loans. Decedent changed one of her bank accounts to a pay-on-death account for the benefit of DeBarr in April 2012, and transferred title of her car to DeBarr in April 2012. Decedent was declared incompetent in January 2013, and the following April DeBarr and Hardwick arranged a line of credit by which Hardwick could take advances against the assets of Decedent, Apple, and their respective trusts. Under this line of credit, Hardwick owed $487,873, including the $190,000 he previously borrowed. Decedent died in July 2013.

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[2] In their reply brief, the Grogans assert that "Woelffer never concluded that the complaints were baseless or 'unfounded.' " Actually, Woelffer did say they were unfounded—twice—as shown on pages 253 and 264 of the reporter's transcript.

B. Statement of Decision

On December 16, 2016, the court filed a proposed Statement of Decision, by which the court would grant DeBarr's petition to probate the 2009 will, deny the Grogans' petition to probate the 2004 will, and deny their petition to invalidate the June 2009 amendment to Decedent's trust. The court proposed to stay the Grogans' 850 Petition pending further order, explaining as follows: "At the beginning of the trial, the court informed the litigants that the court would resolve the challenges to the validity of the June 2009 trust and will of [Decedent] before addressing the issues raised in the 850 Petition filed by the Grogans. In view of the rulings on the challenges to the validity of the June 2009 trust, the 850 Petition [is] stayed [pending] further order of the court. [¶] In the 850 Petition, the Grogans seek an order setting aside loans made to James Hardwick ('Hardwick') and transfers made to DeBarr on the theory that Helen Grogan [is] a beneficiary and has standing to bring the action. Inasmuch as the 2009 trust has been determined to be valid, DeBarr is the residuary beneficiary. Although the issue was not before the court as part of the challenge to the validity of the June 2009 trust, there was evidence introduced that there are sufficient assets in the trust to make the distributions designated for the Grogans and others. In the event[] the ability of the trust to make the designated distributions is questioned, the court may consider lifting the stay and addressing the merits of the 850 petition. [¶] Accordingly, the 850 petition is stayed pending further order of the court."

The Grogans objected to the proposed Statement of Decision, arguing that it violated the "One Final Judgment Rule" and rule 3.1591 of the California Rules of Court, because the court did not rule on the 850 Petition.

On April 7, 2017, the court entered its Final Statement of Decision consistent with the proposed Statement of Decision. Specifically, the court found the Decedent had the requisite capacity to execute the June 2009 trust and June 2009 will, she was not unduly influenced to execute the June 2009 trust and will, the trust and will were not presumptively invalid under Probate Code section 21350, the June 2009 Trust was not invalid due to a mistake, and the Grogans were not entitled to relief under Probate Code

section 259 (financial elder abuse). The court reiterated its explanation for staying the 850 Petition.

C. Judgment

DeBarr submitted a proposed judgment, to which the Grogans objected on the ground that entry of the judgment would violate rule 3.1591 and the one final judgment rule. The court entered DeBarr's proposed judgment in June 2017.

In accord with the Final Statement of Decision, the judgment indicates that DeBarr's petition to probate the 2009 will is granted; the Grogans' petition to probate the 2004 will is denied; the Grogans' petition to contest the 2009 will is denied; DeBarr's petition to confirm DeBarr as trustee and for instructions is granted; and the Grogans' petition to invalidate the June 2009 amendment to the trust is denied. The Grogans' 850 Petition was "stayed pending further order of the Court."

D. The Grogans' Motion to Vacate the Judgment and Appeals

In July 2017, the Grogans filed a motion to vacate the judgment, repeating their arguments that the judgment was void.

On October 13, 2017, while their motions were pending, the Grogans filed a notice of appeal from the judgment. (See Cal. Rules of Court, rule 8.108(c) [extension of time to appeal].)

On October 27, 2017, the court denied the motion to vacate. The Grogans appealed from this order as well.

We consolidated the Grogans' appeal from the judgment (A152698) and their appeal from the order denying their motion to vacate the judgment (A153294).

II. DISCUSSION

A. Appealability and One Final Judgment Rule

The Grogans begin with an argument unusual for appellants: they claim that the judgment—from which they appealed—may not be appealable. This is so, they urge, because the judgment does not include a ruling on the merits of the 850 Petition.

As support for this idea, the Grogans point to decisions holding that a judgment entered when a claim is still pending is not appealable, because of the one final judgment

rule. (Citing *Kurwa v. Kislinger* (2013) 57 Cal.4th 1097, 1100, 1107–1108 (*Kurwa*) [appeal may not be taken from a judgment that disposed of fewer than all pled causes of action, even though the parties agreed to dismiss the remaining counts and cross-complaint without prejudice for later litigation, due to the one final judgment rule]; *Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 741 [one final judgment rule precludes appeal from a judgment disposing of fewer than all causes of action between the parties, even if the other causes have been severed for trial].)[3]

The Grogans' argument is meritless. The one final judgment rule, codified in Code of Civil Procedure section 904.1, subdivision (a)(1), provides that an appeal may not be taken from a judgment disposing of fewer than all the causes of action between the parties; such judgments are merely interlocutory. (*Kurwa, supra,* 57 Cal.4th at p. 1101.) The cases on which the Grogans rely are distinguishable, however, because they involved judgments entered on some, but not all, causes of action contained within a complaint. Here, by contrast, the document denominated as a judgment contains final orders on several separate petitions, each of which may be appealed under the Probate Code.

Code of Civil Procedure section 904.1 permits not only appeals from a final judgment in subdivision (a)(1), but also appeals from "an order made appealable by the Probate Code" in subdivision (a)(10). Probate Code section 1303 authorizes appeals from specified orders, including orders admitting a will to probate, denying a will to probate, granting or revoking letters to a personal representative, and determining the persons to whom distribution should be made. (Prob. Code, § 1303, subds. (a), (b) & (f).) Probate Code section 1304 allows appeals from any final order determining the validity of a trust provision, appointing a trustee, or instructing a trustee under section 17200. (Prob. Code, § 1304, subd. (a); see Prob. Code, § 17200, subd. (b)(3), (6), (10).) The rulings on the petitions in this case are appealable orders, and their appealability is not

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[3] The Grogans also cite *Kurwa v. Kislinger* (2017) 4 Cal.5th 109 (*Kurwa II*), which held that the trial court could permit the parties to proceed to judgment on the outstanding causes of action or dismiss them *with* prejudice, thereby allowing entry of a final judgment from which the plaintiff could appeal. (*Id*. at pp. 112, 119.) That has no bearing on the issues here.

lost merely because another petition was undecided. The judgment, at least as to the adjudicated petitions, is appealable.

More specifically, the only trial ruling contested by the Grogans in this appeal is the court's rejection of their argument that donative transfers from Decedent to DeBarr, occasioned by the June 1, 2009 will and trust amendments, were invalid under Probate Code section 21350 (see *post*). The court's ruling on this issue—a final ruling that requires no further judicial consideration—ostensibly falls within the category of orders that determine "heirship, succession, entitlement, or the persons to whom distribution should be made," or that determine the validity of a trust provision, which the Probate Code expressly makes appealable. (Prob. Code, § 1303, subd. (f), § 1304, subd. (a); see *Estate of Miramontes-Nejara* (2004) 118 Cal.App.4th 750, 755 [order on petition under Prob. Code, § 5021 to set aside a transfer was appealable under Prob. Code, § 1303, subd. (f), because an order is appealable if it has the same effect as an order the Probate Code expressly makes appealable].) The Grogans do not establish otherwise. (See also *Estate of Miramontes-Nejara*, *supra*,118 Cal.App.4th at pp. 755–756 [orders are appealable as a final judgment where nothing remains for judicial consideration and there is no other avenue for appellate review].)

Indeed, if the court's ruling on the Probate Code section 21350 issue is *not* reviewable under Probate Code sections 1303 or 1304, it would not be reviewable at all; appeals in Probate Code cases may be taken only as permitted by the Probate Code. (*Estate of Stoddart* (2004) 115 Cal.App.4th 1118, 1125–1126.)

We therefore proceed to the merits of the Grogans' appeal.

B. The Judgment is Not Void

The Grogans argue that, because the judgment does not resolve all the petitions in the consolidated cases, the judgment is void and must be vacated. They rely on rule 3.1591(a) of the California Rules of Court, which provides: "When a factual issue raised by the pleadings is tried by the court separately and before the trial of other issues, the judge conducting the separate trial must announce the tentative decision on the issue so tried and must, when requested under Code of Civil Procedure section 632, issue a

statement of decision as prescribed in rule 3.1590; but the court must not prepare any proposed judgment until the other issues are tried, except when an interlocutory judgment or a separate judgment may otherwise be properly entered at that time." (Italics added.) The Grogans contend the rule applies to probate proceedings. (See Prob. Code, § 1000.)

Rule 3.1591(a) is inapposite. First, this is not a case in which "a factual issue raised by the pleadings [was] tried by the court separately and *before the trial* of other issues." (Italics added.) Second, the court did not prepare a judgment before "the other issues [were] *tried*." (Italics added.) Moreover, rule 3.1591 does not preclude entry of a judgment on earlier-tried issues if "an interlocutory judgment or a separate judgment may otherwise be properly entered." As discussed *ante*, the rulings made in the judgment on each petition were appealable orders, and the Grogans do not establish that a judgment containing those rulings could not be properly entered. As the trial court explained to the Grogans in denying their motion to vacate the judgment: "The rulings on the various petitions that were tried together as reflected in the Final Statement of Decision and Judgment entered thereon constitute judgments that were properly entered separately from the Grogans Petition to Determine Title To Property Claimed to Belong to Decedent's Estate and For Recovery of Twice the Value of Property Wrongfully Taken ('850 Petition') within the meaning of California Rule of Court 3.1591(a) ['. . . except when . . . a separate judgment may otherwise be properly entered at that time.']."

The Grogans refer us to *Ochoa v. Dorado* (2014) 228 Cal.App.4th 120 (*Ochoa*), claiming it held that the failure to determine all issues in a trial prevented the entry of judgment under rule 3.1591(a), and rulings on post-trial motions were reversed because no judgment had been properly entered due to the deferral of issues for determination. No one could reasonably read *Ochoa* that way.

In *Ochoa*, the trial court deferred ruling on a motion in limine, the jury returned a verdict awarding damages, and the defendants filed a motion for judgment notwithstanding the verdict (JNOV), a motion for a new trial, and a motion to strike the award of certain damages pursuant to the deferred motion in limine. (*Ochoa*, *supra*,

228 Cal.App.4th at p. 129.) The court then heard the motions—including testimony on issues relating to the motion in limine—and issued rulings. On appeal, the court noted that the JNOV and new trial motions were filed before the court had heard testimony and ruled on the in limine motion, and were thus brought before a "decision" on all trial issues. (*Id*. at p. 133 ["When issues are tried separately, there is no 'trial and decision' (§ 656) until all issues have been decided. [Citations]; see Cal. Rules of Court, rule 3.1591(c)."].) The court concluded that the JNOV and new trial motions were premature and thus void, the court had no jurisdiction to rule on them, and those rulings had to be reversed. (*Ochoa*, at p. 133.) In addition, the court observed, the trial court had never entered a judgment, so the defendants could not appeal from any "judgment." (*Ibid*.)

Contrary to the Grogans' representation, the court in *Ochoa* did not rule that the failure to decide all trial issues precluded entry of a valid judgment. Rather, *Ochoa* held that the failure to decide all issues made a motion for a new trial untimely—an issue not present in this case. Furthermore, contrary to the Grogans' representation, Ochoa was not based on rule 3.1591*(a)*. It was based on rule 3.1591*(c)*, which reads: "A judge may proceed with the trial of subsequent issues before the issuance of a statement of decision on previously tried issues. *Any motion for a new trial following a bifurcated trial must be made after all the issues are tried . . . .*" (Italics added.) That too has nothing to do with this case. Finally, *Ochoa* is distinguishable for another reason: there, the defendants could not appeal from the judgment because no judgment had ever been entered; here, a judgment *was* entered, containing final orders on several petitions.

The Grogans additionally argue that, by entering judgment without deciding all of the petitions, the court "blinded itself to vital evidence" bearing on questions of undue influence and capacity. The assertion is not supported by the record. After hearing all the evidence presented at the trial, the court decided the other petitions and concluded, in light of those rulings, that the 850 Petition should be stayed. The fact that the court ultimately stayed the 850 Petition does not mean it "blinded itself" to the evidence the Grogans had offered to prove that petition, to the extent such evidence was relevant to the petitions the court decided.

The Grogans fail to establish that the judgment was void.

C. Statutory Bar to Transfers

The Grogans contended that the June 1, 2009 will and trust amendments were invalid because, among other things, they effected donative transfers from Decedent to DeBarr, donative transfers from a "dependent adult" to a "care custodian" are presumed invalid under Probate Code section 21350, and DeBarr did not present sufficient evidence to overcome the statutory presumption.[4]

1. Law

In 2009, Probate Code former section 21350 provided, as relevant here: "(a) Except as provided in Section 21351, no provision, or provisions, of any instrument shall be valid to make any donative transfer to any of the following: [¶] . . . (6) A *care custodian* of a *dependent adult* who is the transferor." (Stats. 2003, ch. 444, § 1. Italics added.) Former Probate Code section 23151 provided: "Section 21350 does not apply if any of the following conditions are met: [¶] . . . [¶] (d) The court determines, upon clear and convincing evidence, but not based solely upon the testimony of [the transferee], that the transfer was not the product of fraud, menace, duress, or undue influence." (Stats. 2002, ch. 412, § 1.)

In short, the statutes created a presumption that a donative transfer from a "dependent adult" to a "care custodian" is invalid, and the presumption can be overcome only by clear and convincing evidence other than the care custodian's testimony.

Probate Code section 21350 was a remedial statute designed to protect elders (*Bank of America v. Angel View Crippled Children's Foundation* (1999) 72 Cal.App.4th 451, 456-458), and is thus broadly construed to effectuate its statutory purpose. (See *Mahan v. Charles W. Chan Ins. Agency, Inc.* (2017) 14 Cal.App.5th 841, 860–861

[4] Probate Code section 21350 was repealed effective January 1, 2014 and has been replaced by Probate Code section 21380. At the trial in this proceeding in 2017, the court and parties agreed that Probate Code sections 21350 *et seq.* applied to this case. (See *Jenkins v. Teegarden* (2014) 230 Cal.App.4th 1128.)

[definitions of the Elder Abuse Act, Welf. & Inst. Code, § 15610 (which include definitions of "dependent adult" and "care custodian") must be liberally construed].)

2. Trial Court's Order

In its Final Statement of Decision, the court found that Decedent was not a dependent adult, DeBarr was not a care custodian, and DeBarr overcame any presumption by clear and convincing evidence.

We review the trial court's interpretation of the statute de novo. (*Doolittle v. Exchange Bank* (2015) 241 Cal.App.4th 529, 540; *Estate of Shinkle* (2002) 97 Cal.App.4th 990, 1004 (*Shinkle*) ["Since our analysis requires us to interpret the meaning of the phrases 'dependent adult' and 'care custodian' in section 21350(a)(6), we review the matter de novo"].) We review the court's factual findings for substantial evidence.

3. Whether Decedent Was A Dependent Adult

Probate Code section 21350, subdivision (c) stated that "dependent adult" had the meaning of that term in Welfare and Institutions Code section 15610.23 (except that the term also included any person meeting the definition who is over 64). Welfare and Institutions Code section 15610.23, subdivision (a), states: " 'Dependent adult' means any person . . . between the ages of 18 and 64 years who resides in this state and who has *physical or mental limitations that restrict his or her ability to carry out normal activities or to protect his or her rights*, including, but not limited to, persons who have physical or developmental disabilities, or whose physical or mental abilities have diminished because of age." (Italics added.)

Contrary to the Grogans' suggestion, Welfare and Institutions Code section 15610.23 does not mean that all persons who have *any* diminishment of physical or mental ability due to age are necessarily dependent adults. Such a reading would eviscerate the preceding language of the statute, which refers to *restrictions* on carrying out normal activities and protecting rights. Reasonably read, the statute provides that a dependent adult is one whose physical or mental limitations "restrict his or her ability to carry out normal activities or to protect his or her rights," *including* when those limitations have arisen due to age.

Still, the statute does not specify *how* "restrict[ed]" the adult's abilities must be for the adult to be deemed "dependent." (Welf. & Inst. Code, § 15610.23.) In *Cabral v. County of Glenn* (E.D. Cal. 2009) 624 F.Supp.2d 1184 (*Cabral*), the court handled this issue by embracing an unpublished opinion of the California Court of Appeal, which noted that an objective of Welfare and Institutions Code section 15657 was to protect residents of nursing homes and other health care facilities, and concluded: " 'While the definition of "dependent adult" is not limited to persons living in such facilities, it reasonably should *extend only to persons whose disabilities and needs are comparable to persons who are compelled to live in nursing homes and other health care facilities*.' " (*Cabral, supra,* at p. 1194. Italics added.) The California court had found the decedent not to be a dependent adult, even though he was " '56 years of age, was blind in one eye and partially blind in the other eye, suffered from posttraumatic stress disorder, was disabled due to his medical and psychiatric problems, suffered from neurological 'sequelae' from a rifle wound to the head, was facially disfigured and had been rated as 100 percent disabled by the United States Department of Veterans Affairs," because the allegations of physical and mental disabilities did not show that "decedent, who admittedly lived independently," suffered sufficiently severe restrictions. (*Id*. at p. 1194–1195.) *Cabral* ruled that the allegations before it were also insufficient, despite assertions that the subject adult was mentally ill and psychotic. (*Id*. at p. 1195.)

In the matter before us, the trial court (citing *Cabral*) stated that " 'dependent adult' extends to persons whose disabilities and needs are comparable to persons who are compelled to live in nursing homes and other health care facilities." The Grogans insist that this is an incorrect statement of the law, and the definition of dependent adult "focuses on the elder's vulnerability due to age, physical or mental disability." We need not resolve this debate, because under any reasonable view of the statute, the evidence supported the conclusion that Decedent was not a dependent adult.

Construing the statute broadly to effect its remedial purpose, and applying a common sense interpretation of the statutory language, it is readily apparent that a transferor would not be a "*dependent* adult" unless the restrictions on his or her ability to

carry out normal activities and protect his or her rights were at least so significant as to indicate "dependence" rather than "independence."

Here, the trial court concluded that Decedent was not a dependent adult, as follows: "In June 2009, [Decedent] lived alone and *independently*. She did require the assistance of a care giver for 4 hours a day, 5 days a week to help with cooking, cleaning and attending doctor appointments. However, for the other 20 hours a day, and 24 hours a day on the weekends, [Decedent] lived *independently*. [Decedent] had various diagnoses and health challenges but there wasn't evidence that they rendered her incompetent or prevented her from living at home *independently* at the time she made the decisions to change her trust and will. [Decedent] was able to sign her admission and release papers when she was hospitalized. She made *her own* medical decisions, such as authorizing the pace maker surgery in June 2009. In June 2009, [Decedent] did not have physical or mental limitations that restricted her ability to carry out normal activities (or arrange for help) or to protect her rights." (Italics added.)

The court's findings were supported by substantial evidence, as set forth in our summary of the evidence *ante*. And those findings supported the conclusion that Decedent was not a dependent adult for purposes of Probate Code section 21350. (See *D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 18–19 [a ruling will be affirmed if correct under the law, regardless of the trial court's reasoning or legal standard].) Indeed, even under the Grogans' view that the definition of dependent adult "focuses on the elder's vulnerability due to age, physical [disability] or mental disability," the evidence supports the ruling that Decedent was not a dependent adult.

The Grogans point to evidence that Decedent, at the time of the transfer in June 2009, was 78 years old, suffered from numerous maladies, had been hospitalized multiple times, was cognitively incapable of complex decisions, received in-home care, and was generally depending on DeBarr to navigate the world. It is not our task, however, to reweigh the evidence; instead, we determine if there was substantial evidence from which the trial court *could* reasonably make its findings. That standard was met here, and those findings were sufficient to uphold the court's ruling.

The Grogans also refer us to *Shinkle, supra,* 97 Cal.App.4th 990, in which a trust was invalidated under Probate Code section 21350. There, the court of appeal observed: "Appellant *does not contest* the trial court's finding that Shinkle was a dependent adult under section 21350(c). She was 77 years old when she met Thompson. She had difficulty walking when she left GHC; by the time she executed the trust, she was no longer walking. She needed assistance with most activities of daily living, including cooking, bathing and toileting. She *no longer did her own banking and needed help paying her bills*. The trial court correctly found that Shinkle was a dependent adult." (*Shinkle, supra,* at p. 1105. Italics added.)

The Grogans' reliance on *Shinkle* is unavailing. The passage they cite is dictum, since the parties had not disputed whether Shinkle was a dependent adult and the issue was thus not before the court. Furthermore, *Shinkle* is distinguishable on its facts. When Shinkle executed the trust, she was no longer walking, needed assistance with cooking, bathing, and using the toilet, and was *not* doing her own banking and needed help paying the bills. (*Id*. at p. 1105.) In fact, the month before Shinkle executed the documents, she fell, stopped walking, became incontinent, and from that point forward complained of pain daily and "slept in a chair in the living room." (*Id*. at p. 997.) Her helper would arrive in the morning and carry her to a chair at the kitchen table, where she remained until her helper returned later in the day; in the evening, the helper made Shinkle her dinner, then "carried her back to the living room chair, where she slept." (*Ibid*.)

Here, by contrast, although Decedent hired a part-time caregiver to assist with some activities, she largely operated on her own for the rest of the weekdays and completely on her own on the weekends. Unlike Shinkle, she took care of her own finances and bills, and even the finances of her friend Apple.

The Grogans fail to establish error in the court's conclusion that Decedent was not a dependent adult for purposes of Probate Code section 21350. We therefore need not consider the court's rulings as to whether DeBarr was a care custodian or overcame any presumption arising under the statute.

D. Order Denying Motion to Vacate Judgment

Our conclusion that the judgment is not void suggests that the trial court correctly rejected the Grogans' motion to vacate the judgment. We note the Grogans' argument that the court was without jurisdiction to rule on the motion, because by the time of its ruling the judgment had been appealed. (*People v. Alanis* (2008) 158 Cal.App.4th 1467, 1472–1473.) However, since a trial court has jurisdiction, even after a judgment has been appealed, to vacate the judgment if it is void, the court here arguably had jurisdiction to deny the motion *claiming* the judgment was void, especially since the ruling did not disturb the judgment on appeal. (See *ibid*.) In any event, we need not reach this question since, as a practical matter, our conclusion that the judgment is not void renders moot the appeal from the order declining to vacate the judgment.[5]

III. DISPOSITION

The judgment is affirmed.

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[5] DeBarr filed a motion to dismiss the appeal from the denial of the motion to vacate, because an order denying a non-statutory motion to vacate is not appealable, the order left the judgment intact, and the judgment itself is appealable. The Grogans disagreed. We deferred ruling on the motion pending our consideration of the merits of the appeals. We now deny the motion, both as moot and on the merits. (*Rooney v. Vermont Investment Corp*. (1973) 10 Cal.3d 351, 358.)

NEEDHAM, J.

We concur.

JONES, P.J.

BURNS, J.